

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Review of the Section 251 Unbundling	)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange	)	
Carriers	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions of the Telecommunications Act of	)	
1996	)	
	)	
Deployment of Wireline Services Offering	)	CC Docket No. 98-147
Advanced Telecommunications Capability	)	

**OPPOSITION TO PETITION FOR RECONSIDERATION**

The Broadband Group of CIENA Corporation (“CIENA”), formerly Catena Networks, Inc., hereby opposes the petition of AT&T Corp. (“AT&T”) seeking reconsideration of the Commission’s decision to reduce the unbundling obligation imposed on incumbent local exchange carriers (“ILECs”) for their fiber-to-Multiple Dwelling Units (“fiber-to-MDUs”) in predominantly residential buildings.<sup>1</sup> The Commission’s broadband policies are already demonstrably working to accelerate the deployment of advanced services, to the benefit of subscribers and importantly, to the benefit of telecommunications manufacturers. The Commission should thus reject AT&T’s pleas to retreat from its decision to apply those reduced unbundling policies to fiber-to-MDUs, a subset of fiber-to-the-home (“FTTH”) architectures.<sup>2</sup>

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<sup>1</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Reconsideration, FCC 04-191, released August 9, 2004 (hereafter cited as “*MDU Reconsideration Order*”). Notice of AT&T’s petition appeared in the *Federal Register*, October 27, 2004, at p. 62693.

<sup>2</sup> *See e.g.*, Telcordia Technologies’ Generic Criteria for Fiber in the Loop Systems -

In the *Triennial Review Order*, the Commission determined that under the “at a minimum” standard of Section 251(d)(2), the Commission should balance any “impairment” for fiber loops against other important policy goals, including Congress’ directive in Section 706 of the Telecommunications Act of 1996 to facilitate the deployment of advanced services to all Americans.<sup>3</sup> In light of the importance of fostering broadband deployment, the Commission decided to reduce or eliminate unbundling of fiber-based facilities. The Court of Appeals upheld that decision against the challenges of AT&T and other competitive carriers.<sup>4</sup> Indeed, as the Court of Appeals observed with regard to the Commission’s decision to minimize unbundling of FTTH:

An unbundling requirement under these circumstances seems likely to delay infrastructure investment, with CLECs tempted to wait for ILECs to deploy FTTH and ILECs fearful that CLEC access would undermine the investments’ potential return. Absence of unbundling, by contrast, will give all parties an incentive to take a shot at this potentially lucrative market.<sup>5</sup>

In the order being challenged by AT&T, the Commission merely extended these policies to a particular FTTH architecture in which the fiber is deployed to predominantly residential buildings – the Commission decided that whether the inside wiring is owned by the building or the ILEC, or whether that inside wiring is metallic or fiber, does not

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- GR-909-Core, 2.2 (Issued March 2000), which includes fiber-to-MDUs, and specifies that when fiber is placed in the loop to serve MDUs, the final drop to the individual residence will be a copper loop of up to 500 feet.

<sup>3</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) at ¶¶172-178.

<sup>4</sup> *United States Telecom Ass’n v. FCC*, 359 F.3d 554, 578-84 (D.C. Cir. 2004).

<sup>5</sup> *Id.*

affect the economics of impairment or the need to facilitate advanced services.<sup>6</sup> The marketplace is already responding affirmatively to these regulatory “signals,” and AT&T has not provided any good reason to abandon these goals in the case of fiber-to-MDUs.

Not only are these policies “ain’t broke,” they are succeeding immensely.<sup>7</sup> Verizon, BellSouth and SBC have all indicated that they are accelerating their plans for deployment of deep-fiber architectures as a result of the Commission’s decision to eliminate unbundling requirements for these advanced services facilities. Verizon, which will deploy FTTH to one million homes this year, will be doubling that effort next year, and hiring thousands of new employees to make it happen.<sup>8</sup> SBC announced that it was accelerating its Project Lightspeed to deploy deep-fiber to provide 18 million households with high-speed services during the next two to three years, rather than the five years the company originally projected for the project.<sup>9</sup> BellSouth has indicated that the number of

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<sup>6</sup> *MDU Reconsideration Order* at ¶ 11. The Commission has taken similar incremental refinements in recent decisions extending the FTTH unbundling treatment to fiber-to-the-curb, and in forbearing from applying a Section 271 unbundling obligation in circumstances where unbundling was eliminated under Section 251(c)(3). *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Reconsideration, FCC 04-248, released October 18, 2004; *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, FCC 04-254, released October 27, 2004.

<sup>7</sup> *Cf., United States v. Natanel*, 938 F.2d 302, 310 (1st Cir. 1991)(“ In litigation, as in life, there is much to be said for such maxims as 'if it ain't broke, don't fix it'”).

<sup>8</sup> Verizon News Release, “Verizon Deploying Fiber Optics to Homes and Businesses in 6 More States in Northeast and Mid-Atlantic; *Fiber Deployment and FiOS Sales Continue in California, Florida and Texas; Verizon to Hire 3,000 to 5,000 New Employees Over the Next 14 Months*,” (October 21, 2004).

<sup>9</sup> *E.g., Networking*, “SBC High Tails Fiber Buildout” (October 14, 2004).

homes equipped with an advanced fiber platform will increase by forty percent next year as a result of the Commission's decisions to reduce or eliminate unbundling for fiber-based loops.<sup>10</sup>

At the same time, CIENA is experiencing a higher level of interest by competitive carriers in CIENA's broadband access products, which indicates that the CLECs are also reacting as expected to the Commission's broadband policies. Through the use of UNE-L or deployment of their own broadband pipes, the competitive carriers will be investing in facilities-based competition. Moreover, the Commission has taken several other important steps to facilitate such activities. The Commission recently adopted rules for broadband over power line operations, which should help make this near ubiquitously-deployed facility capable of providing high-speed data access.<sup>11</sup> In the wireless arena, the Commission has allocated additional licensed and unlicensed spectrum to support broadband services, as well as modifying service rules to allow incumbent licensees to

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<sup>10</sup> BellSouth New Release, "FCC Decision on Fiber-to-the-Curb is a Step in the Right Direction" (October 14, 2004).

<sup>11</sup> *Amendment of Part 15 regarding new requirements and measurement guidelines for Access Broadband over Power Line Systems*, FCC 04-245, released October 28, 2004. See also, Current Technologies description on its website of its activities (<http://www.currenttechnologies.com/about/history.html>):

Current Technologies solution is being deployed commercially to Cinergy's 1.5 million customers in Ohio, Indiana and Kentucky, following 14 months of trials, during which the network's robust performance and reliability produced high customer satisfaction and a strong interest in enrolling in the commercial service. A successful smaller scale trial has also been in operation in Maryland with Pepco since late 2002.

expand their offerings to include broadband services.<sup>12</sup> Meanwhile, cable company-provided broadband services remain the predominant supplier of advanced services,<sup>13</sup> and those cable companies are offering their high-speed data services to business as well as residential customers.<sup>14</sup> The Commission's actions, including its decision in this proceeding to extend FTTH unbundling rules to fiber-to-MDUs in predominantly residential buildings, will help ensure robust, facilities-based broadband competition. The Commission did not, as AT&T alleges, signal "the end of competitive choice" to subscribers in predominantly residential buildings by adopting the *MDU Reconsideration Order*.<sup>15</sup>

CIENA believes that the Commission's broadband policies are important to ensuring that advanced services are available to all Americans. As the Commission itself acknowledged in the *Fourth Broadband Report* on the availability of advanced telecommunications services:

The deployment of infrastructure capable of delivering broadband services is

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<sup>12</sup> See generally, Federal Communications Commission, "Availability of Advanced Telecommunications Capability in the United States, Fourth Report to Congress," September 9, 2004 at pp. 18-22 ("*Fourth FCC Broadband Report*").

<sup>13</sup> E.g., *Fourth FCC Broadband Report* at pp. 16 and 29. Indeed, according to one recent report, for the latest quarter (Third Quarter '04), new cable modem deployments (1.28 million) outpaced new DSL deployments (1.02 million), so the cable modem lead widened slightly. Dow Jones Newswire, "Broadband Sign-Ups Accelerate In 3Q; Cable Got Majority" (November 10, 2004) (based on a new report from Leichtman Research Group).

<sup>14</sup> See, e.g., UNE Fact Report 2004, submitted by BellSouth, SBC, Qwest and Verizon, October, 2004 at pp. I-10, III-25 and III-36 – III-38.

<sup>15</sup> Cf., AT&T Petition at p. 1.

critical to the U.S. economy. Broadband has played and will continue to play a vital role in the 21<sup>st</sup> Century. Many U.S. companies depend on broadband connections to run various facets of their businesses .... In addition to tangible benefits to the economy, broadband has a significant impact on the lives of everyday citizens.<sup>16</sup>

Indeed, each of the Commissioners in their separate statements recognized the importance of broadband.<sup>17</sup> In the case of fiber-to-MDUs, this particular deep fiber technology can deliver very high-speed data, multi-channel video and voice services, thus clearly qualifying as advanced services. AT&T has provided no valid basis for the Commission to retreat from the critical goal of fostering advanced services to residents of MDUs.

In the *MDU Reconsideration Order*, the Commission indicated that a significant number – roughly one-third of Americans – reside in MDUs.<sup>18</sup> In directing the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans,” surely Congress did not intend to limit such policies only to residents of MDUs where the inside wiring is owned by the

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<sup>16</sup> *Fourth FCC Broadband Report* at p. 47.

<sup>17</sup> Chairman Powell stated that “Americans deserve information at the speed of light – and it is the country’s next challenge to deploy a network that is at least as capable as any other nation’s.” *Id.* at p. 3. Commissioner Abernathy related: “I have been privileged to see first-hand how broadband is changing the lives of Americans, including the way we work, learn, receive health care, and play.” *Id.* at p. 4. Indeed, as Commissioner Copps observed in his separate statement: “Our economy and our future will be driven by how quickly and completely we deploy broadband.” *Id.* at p. 5. Likewise, Commissioner Martin indicated in his statement that “Broadband services are essential to the economy of the 21<sup>st</sup> Century.” *Id.* at p. 6. And Commissioner Adelstein noted that “From telecommuting to distance learning to telemedicine, broadband is bridging distances between us and transforming communities.” *Id.* at p. 7.

<sup>18</sup> *MDU Reconsideration Order* at ¶ 7.

building, or where the inside wiring is fiber all the way to each unit. The Commission recognized that it could correct this anomaly by providing a more nuanced balancing of impairment and the Section 706 goals by distinguishing between predominantly residential MDUs and other buildings housing primarily enterprise customers.<sup>19</sup> Moreover, despite AT&T's claims to the contrary,<sup>20</sup> the "predominantly residential" standard should not create any additional confusion – as the Commission observed in the *MDU Reconsideration Order*, this concept has been applied successfully in the past.<sup>21</sup>

In sum, the Commission made an eminently reasonable decision to apply greater precision in distinguishing between predominantly residential and other buildings for purposes of assessing the unbundling treatment of fiber extended all the way to the buildings. The Commission then correctly decided that in the case of predominantly residential buildings, the important goal of fostering the availability of advanced services to all Americans outweighed any impairment that may exist. The Court of Appeals has already upheld such a balancing of interests. Moreover, these policies are already reaping significant rewards in the form of accelerated fiber investment. AT&T has

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<sup>19</sup> *Id.* at ¶ 8.

<sup>20</sup> AT&T Petition at p. 9.

<sup>21</sup> *MDU Reconsideration Order* at ¶ 6. On the other hand, CIENA urges the Commission to address promptly the still open issue of the definition of "enterprise customer" so as to be able to distinguish among businesses those that are large users of communications. AT&T refers to the "incidental" businesses situated in predominantly residential buildings as "enterprise customers" (*e.g.*, AT&T Petition at p. 8), although presumably most business customers located in predominantly residential buildings will be small businesses (such as dry cleaners and convenience stores) that are exempt from unbundling in FTTH deployments.

presented no valid reasons to reverse course. WHEREFORE, CIENA urges the Commission to deny promptly AT&T's petition for reconsideration of the *MDU Reconsideration Order*.

Respectfully submitted,

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